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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. BENGE, JR.,
PETITIONER
v.
RICK KEARNEY, WARDEN
SUSSEX CORRECTIONAL
INSTITUTION; AND CARL
C. DANBERG, ATTORNEY
GENERAL OF THE STATE
OF DELAWARE
RESPONDENTS

NO. 05-0550 (GMS)



**MOTION FOR A DETERMINATION UNDER
HABEAS CORPUS RULE 8(a) AND FOR
SUMMARY JUDGMENT UNDER RULE 56(A)
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

COMES NOW, John H. Benge, Jr., petitioner *pro se* above-named

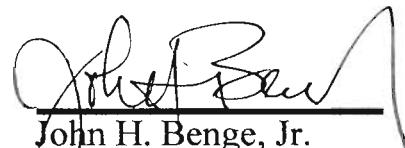
(“Petitioner”) and pursuant to Habeas Corpus Rule 8(a) and FRCP Rule 56(a) moves as follows:

1. For a determination under Habeas Corpus Rule 8(a) that no evidentiary hearing is warranted upon review of the petition, answer of respondents, transcript and record of state court proceedings, and the additional materials submitted by the parties under Habeas Corpus Rules 5 and 7.

2. For summary judgment under FRCP Rule 56(a) for Petitioner on each of the claims set forth in the *habeas corpus* petition filed in the above-captioned case.

The grounds for this motion are that there is no genuine issue as to any fact material to Petitioner's claims for *habeas corpus* relief under 28 U.S.C. §2254 and that Petitioner is entitled to relief as a matter of law.

Date: November 2, 2006


John H. Benge, Jr.
P.O. Box 500
Georgetown, DE 19947

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the attached motion were served on November 2, 2006 by depositing the same in the prisoner mail dropbox at Sussex Correctional Institution, Georgetown, Delaware, first class mail, postage prepaid, and addressed to:

Thomas E. Brown, Esq.
Deputy Attorney General
Department of Justice
820 North French Street
Wilmington, DE 19801

I hereby certify under penalty of the laws of the United States of America that the foregoing is true and correct.

Executed on November 2, 2006

